

EXHIBIT 3

Email Exchange Part A:

From: James R. Daly [<mailto:jrdaly@JonesDay.com>]
Sent: Friday, November 09, 2007 5:18 PM
To: Gobena, Gejaa (CIV)
Cc: St.Peter-Griffith, Ann (USAFLS); R. Christopher Cook; Jason G. Winchester; Lavine, Mark (USAFLS);
Brooker, Renee (CIV); bjmmurray@JonesDay.com
Subject: RE: MTD Oral Argument Follow Up

It did not slip through the cracks. I have been rather occupied and will respond next week.

James R. Daly
JONES DAY
77 W. Wacker Dr.
Suite 3500
Chicago, Illinois 60601
Phone: 312-269-4141
Fax: 312-782-8585

"Gobena, Gejaa
(CIV)"
<Gejaa.Gobena@usdoj.gov> To
"James R. Daly"
<jrdaly@JonesDay.com>, "Jason G.
Winchester"
11/09/2007 04:03 PM <jgwinchester@JonesDay.com>, "R.
Christopher Cook"
<christophercook@JonesDay.com>
cc
"Brooker, Renee (CIV)"
<Renee.Brooker@usdoj.gov>, "Lavine,
Mark (USAFLS)"
<Mark.Lavine@usdoj.gov>,
"St.Peter-Griffith, Ann (USAFLS)"
<Ann.St.Peter-Griffith@usdoj.gov>
Subject
RE: MTD Oral Argument Follow Up

I am following up on this because time is of the essence given how much time is remaining in the fact discovery portion of our case. Perhaps this slipped through the cracks. Please provide responses to the questions below as soon as possible.

From: Gobena, Gejaa (CIV)
Sent: Wednesday, November 07, 2007 4:48 PM
To: 'James R. Daly'; 'Jason G. Winchester'
Cc: Brooker, Renee (CIV); Lavine, Mark (USAFLS); St.Peter-Griffith, Ann (USAFLS)
Subject: MTD Oral Argument Follow Up

I wanted to follow up with you on two items from the oral argument:

1. When do you expect to get us the "draft" Answer that Judge Saris asked you to provide us? We have the California Answer. If your affirmative defenses are limited to what is asserted there, then perhaps we are ok already. If you have unique affirmative defenses viz the federal government, could you give us an idea of when you'll be providing them?

2. Jim, when leaving the court, I thought I overheard you telling the clerk that you were going to call him about oral argument about some motion. I do not know if you had that ex parte call with him or not. If you did and it was regarding this case, could you tell us (1) what oral argument you were talking about (the deliberative process motion?) and (2) what was discussed (in particular what sense the clerk gave you about when the argument might happen)?

Thanks.

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Email Exchange Part B:

From: Gobena, Gejaa (CIV)
Sent: Tuesday, November 20, 2007 12:14 PM
To: James R. Daly
Cc: jbreen@breenlaw.com; Jason G. Winchester
Subject: RE: Follow up from November 5, 2007 Argument before Judge Saris

Jim:

Anything further on whether you will be asserting additional affirmative defenses re the United States beyond what have been asserted in the other cases?

-----Original Message-----

From: James R. Daly [<mailto:jrdaly@JonesDay.com>]
Sent: Monday, November 12, 2007 3:08 PM
To: Gobena, Gejaa (CIV)
Cc: jbreen@breenlaw.com; Jason G. Winchester
Subject: RE: Follow up from November 5, 2007 Argument before Judge Saris

I have not communicated with Mr. Alba since we were in court.

James R. Daly
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"Gobena, Gejaa
(CIV)"
<Gejaa.Gobena@usdoj.gov> To
"James R. Daly"
<jrdaly@JonesDay.com>
cc
11/12/2007 02:04 PM <jbreen@breenlaw.com>, "Jason G.
Winchester"
<jgwinchester@JonesDay.com>
Subject
RE: Follow up from November 5, 2007
Argument before Judge Saris

Thanks for the update, Jim. You told Mr. Alba you would call him to discuss scheduling further. I take it from your answer below, you did not. Could you please confirm.

-----Original Message-----

From: James R. Daly [<mailto:jrdaly@JonesDay.com>]

Sent: Monday, November 12, 2007 3:01 PM
To: Gobena, Gejaa (CIV)
Cc: jbreen@breenlaw.com; Jason G. Winchester
Subject: RE: Follow up from November 5, 2007 Argument before Judge Saris

We are discussing whether there will be affirmative defenses against the government that will be additional to or different from those asserted in other cases. Folks are working on getting you an answer to that question shortly. I spoke to Mr. Alba in open court at the conclusion of our argument last week about scheduling argument on the deliberative process privilege motions, which I believe are fully briefed. I have no further information on that front.

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"Gobena, Gejaa
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<Gejaa.Gobena@usdoj.gov>
To: "Jason G. Winchester"
<jgwinchester@JonesDay.com>,
<jbreen@breenlaw.com>
11/12/2007 01:44
cc: "James R. Daly"
<jrdaly@JonesDay.com>
Subject: RE: Follow up from November 5,
2007
Argument before Judge Saris

Let's both sides try and get answers by close of business tomorrow (Tuesday) to: (1) any defenses Abbott is going to assert against the United States beyond what it has in other AWP cases, (2) ex parte communications with the court Jones Day has had about the scheduling of arguments (not sure

why this question has taken almost a week to answer) and (3) your queries below about communications between the relator and the government regarding the amendment of the Florida Abbott complaint.

-----Original Message-----

From: Jason G. Winchester [<mailto:jgwinchester@JonesDay.com>]

Sent: Monday, November 12, 2007 2:24 PM

To: Gobena, Gejaa (CIV); jbreen@breenlaw.com

Cc: James R. Daly

Subject: Follow up from November 5, 2007 Argument before Judge Saris

Gejaa and Jim:

On reading the transcript of last week's argument on the Motion to Dismiss the First Amended Complaint, it is unclear to me whether the United States affirmatively agreed, at least orally, to Ven-A-Care's motion to amend its complaint to conform to the DOJ's complaint-in-intervention. Gejaa merely asserted during the argument that there was no written consent. Given the Court's questions, I believe the Court has a right to know exactly what if anything transpired between DOJ and Ven-A-Care with respect to the amendment, other than the acknowledged fact that the DOJ did not oppose the motion.

Accordingly, please tell us whether there were any discussions between Ven-A-Care and the DOJ (or lawyers on either side) relating the amendment, and in particular whether the DOJ affirmatively indicated in any way (orally or in writing) its assent to the proposed amendment.

As you can appreciate, because we need to file a responsive brief this week, we need an answer on or before the close of business tomorrow, Tuesday, November 13.

Thanks very much.
JGW

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Email Exchange Part C:

From: Jason G. Winchester [<mailto:jgwinchester@JonesDay.com>]
Sent: Friday, November 23, 2007 2:26 PM
To: Gobena, Gejaa (CIV)
Cc: James R. Daly; Brian J Murray
Subject: DOJ - Abbott's Affirmative Defenses

Gejaa -

Per Judge Saris' request, we can confirm that Abbott intends to assert affirmative defenses in response to the Government's complaint in intervention that are substantially similar to those asserted in the California action. At this time, we do not foresee adding any additional defenses.

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